

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

REC-117
MAY 19 1998
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)	
)	
Implementation of the Telecommunications)	CC Docket No. 96-115
Act of 1996:)	
)	
Telecommunications Carriers' Use of)	
Customer Proprietary Network Information)	
and Other Customer Information)	
)	
Implementation of the Non-Accounting)	CC Docket No. 96-149
Safeguards of Sections 271 and 272 of the)	
Communications Act of 1934, as Amended)	

REPLY COMMENTS OF U S WEST COMMUNICATIONS, INC.

Kathryn Marie Krause
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2859

Attorney for
U S WEST COMMUNICATIONS, INC.

Of Counsel,
Dan L. Poole

May 13, 1998

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	ii
I. A STRONG CASE IS MADE FOR DEFERRAL OR FORBEARANCE OF THE FEDERAL COMMUNICATIONS COMMISSION'S ("COMMISSION") CUSTOMER PROPRIETARY NETWORK INFORMATION ("CPNI") RULES WITH RESPECT TO COMMERCIAL MOBILE RADIO SERVICES ("CMRS") AND MARKETING OF CUSTOMER PREMISES EQUIPMENT ("CPE") AND INFORMATION SERVICES	1
II. A SIMILARLY STRONG CASE IS MADE FOR DEFERRAL OF THE COMMISSION'S CPNI RULES AS THEY PERTAIN TO CPE AND INFORMATION SERVICES VIS-À-VIS WIRELINE CARRIERS	5
III. EITHER A DEFINITIVE CLARIFICATION SHOULD BE COMMUNICATED REGARDING NAME AND ADDRESS INFORMATION, AS WELL AS WIN-BACK COMMUNICATIONS, OR THE RULES SHOULD BE DEFERRED OR FORBORNE PENDING RECONSIDERATION	9
A. Name And Address Information.....	9
B. Win-Back Communications	11
IV. CPNI USE WITHIN A "PACKAGE" ENVIRONMENT	12
V. CONCLUSION	14

SUMMARY

U S WEST herein supports those commentators supporting either a deferral or an act of forbearance by the Commission with respect to the Commission's proposed rules dealing with the marketing of CPE and enhanced services, in both a wireless and wireline context. In both contexts, customer expectations have developed -- and have been fostered by Commission precedent and policy -- such that they expect their telecommunications carriers to provide them with information and provision such ancillary services.

One needs only to take the advocacy of CMRS providers and engage in elliptical editing to appreciate how the arguments made on their behalf are equally applicable to wireline providers. Furthermore, while CMRS providers seek to promote some type of "unique" relationship between themselves and their customers, as other commentators make clear, the operation of the Commission's CPNI rules and its promotion of CPE and enhanced services joint marketing have resulted in a similar marketplace expectation with respect to such offerings regardless of the providing carrier.

U S WEST also supports those commentators arguing that the Commission should specifically clarify that name and address information is not CPNI. We further support those arguing for forbearance or deferral of the Commission's win-back rule. It is not only anticompetitive but substantially curtails the benefits that should otherwise inure to consumers from competitive alternatives. Finally, we support those who themselves support GTE's proposal that the Commission should defer or forbear from applying its CPNI rules "bucket" approach to those customers

who purchase service packages.

Even if the Commission rejects the notion that customers, in general, expect information on the entire product family available from their telecommunications carrier supplier, it should allow for an opportunity to reconsider this position with respect to customers who subscribe to service packages. The expectations of such customers, as demonstrated by their purchasing conduct, are probably not confined to "buckets" but are more aligned with getting the best "total package value" for their spending dollars. Thus, until the Commission has had an opportunity to reconsider this matter, it should defer or forbear from application of its CPNI rules as they are currently written.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Implementation of the Telecommunications Act of 1996:)	CC Docket No. 96-115
)	
Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information)	
)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended)	CC Docket No. 96-149
)	

REPLY COMMENTS OF U S WEST COMMUNICATIONS, INC.

I. **A STRONG CASE IS MADE FOR DEFERRAL OR FORBEARANCE OF THE FEDERAL COMMUNICATIONS COMMISSION'S ("COMMISSION") CUSTOMER PROPRIETARY NETWORK INFORMATION ("CPNI") RULES WITH RESPECT TO COMMERCIAL MOBILE RADIO SERVICES ("CMRS") AND MARKETING OF CUSTOMER PREMISES EQUIPMENT ("CPE") AND INFORMATION SERVICES**

U S WEST Communications, Inc. ("U S WEST") supports those commentors supporting both the Request for Deferral and Clarification filed by the Cellular Telecommunications Industry Association ("CTIA") on April 24, 1998,¹ and the Petition for Temporary Forbearance or, In the Alternative, Motion for Stay filed by

¹ CTIA Request for Deferral and Clarification, filed herein Apr. 24, 1998 ("CTIA Request").

GTE Service Corporation ("GTE") on April 29, 1998.² Universally, those telecommunications carriers providing exclusively CMRS support the requests for relief.³ So too do most of the commentators who provide both wireline and wireless services, arguing that the fundamental relief being requested *vis-à-vis* CPE and enhanced services be extended to all carriers.⁴

In addressing CMRS services, commentators focus on the fact that existing customer expectations (expectations both reasonable and predictable given past regulatory precedent and market conduct) support the provision of CPE and information services in the "bundle" or "package" of CMRS offerings. These expectations have been fostered by the integral connection between CMRS CPE and the underlying offering,⁵ as well as Commission policies.⁶ The customers'

² Petition for Temporary Forbearance or, In the Alternative, Motion for Stay, filed herein Apr. 29, 1998 by GTE Service Corporation, and its Affiliated Domestic Telecommunications, Wireless, and Long Distance Companies ("GTE Petition").

³ See, generally, AirTouch Communications, Inc. ("AirTouch"), ALLTEL Communications, Inc. ("ALLTEL"), Bell Atlantic Mobile, Inc. ("BAM"), 360° Communications Company ("360°"), Omnipoint Communications, Inc. ("Omnipoint"), PrimeCo Personal Communications, L.P. ("PrimeCo"), Rural Cellular Association ("RCA"), Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint Spectrum"), United States Cellular Corporation ("USCC") and Vanguard Cellular Systems, Inc. ("Vanguard"). Comments were filed May 8, 1998.

⁴ See, generally, Ameritech, AT&T Corp. ("AT&T"), Bell Atlantic Telephone Companies ("Bell Atlantic"), GTE Service Corporation ("GTE"), SBC Communications Inc. ("SBC"), United States Telephone Association ("USTA").

⁵ See Vanguard at 4, 5; 360° at 4 n.11; USCC at 3; PrimeCo at 3, 6; BellSouth at 6; AT&T at 4-6. U S WEST supports the position, advanced by AT&T, that to the extent a customer currently has purchased CPE from a carrier, inferred approval exists to use telecommunications service CPNI to sell additional or upgraded CPE with respect to that telecommunications service. Id. at 6. And compare BellSouth at 7-8, 9. The same should be true for information services, as well.

⁶ See PrimeCo at 2 and n.4; Omnipoint at 2.

expectations which have grown-up around the existing market and regulatory *status quo* neither compromise customer privacy nor impede robust competition. And, the change in that *status quo* with respect to the customers of all carriers is certain to result in "customer confusion, disruption and dislocation."⁷

For these reasons, the Commission should either defer the effective date of its CPNI rules as requested by CTIA or should forbear from allowing such rules to become effective or enforced as requested by GTE at least with respect to CMRS providers, until the Commission concludes the Reconsideration round associated with its Second Report and Order.⁸ Such delay will assure that the quality customer service currently being provided by CMRS providers to their customers will not come to an abrupt halt. Furthermore, it will allow the continued communication of lawful, accurate information to consumers in a manner consistent with First Amendment⁹ and consumer protection principles.¹⁰ Neither principle is

⁷ USTA at 3.

⁸ In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, Second Report and Order ("Second Report and Order" or "Order") and Further Notice of Proposed Rulemaking, FCC 98-27, rel. Feb. 26, 1998. It is clear from the comments that a significant number of petitions for reconsideration are expected to be filed with respect to the Commission's Order.

⁹ Note comments such as 360° at 4 (arguing that the Commission's rules will require it to immediately cease its planned marketing efforts on 90% of its new service packages), USCC at 4-5, BAM at 6 and Exhibits 1-3, RCA at 7, PrimeCo at 3 (all noting that their marketing efforts will need to cease or be extremely curtailed unless the Commission's CPNI rules are, at least in part, deferred or treated with forbearance). And see SBC at 22 (arguing that the Commission's win-back rules could foreclose "speaking with [a] customer"). Of course, marketing communications are "speech," entitled to First Amendment protection.

compromised by the conveyance of factually-accurate commercial information, even when targeted to listeners based on internal carrier-held CPNI. Indeed, consistent with First Amendment values, the Commission should strive to promote policies that provide for more information -- not less -- to consumers.¹¹

Given that no party to the Commission's CPNI Proceedings ever demonstrated "harm" to either the consumer or the marketplace from the bundled sale of CMRS and CPE or information services, a deferral or forbearance is all the more appropriate. Consumer harm will certainly occur if CMRS providers are required to market services without the equipment necessary to allow the service to be activated or are required to forego mentioning ancillary services, such as voice mail, that allow customers to manage the totality of their mobile telecommunications needs. Based on these facts, the Commission should either defer the effective date of its CPNI rules *vis-à-vis* CMRS providers or should forbear from applying or enforcing its rules with respect to such providers until the conclusion of the reconsideration period.

¹⁰ Compare Ameritech at 2 (noting that the Commission's CPNI rules "result in a practical deprivation of customers' ability to be informed about products and services naturally associated with those for which they already have an established relationship with their carriers."); SBC at 15 (noting that the Commission's proposed solicitation approval process is "foreign to the customer and [will] detract from the carrier's ability to present an informed, fully-considered and comprehensive sales approach from the outset.").

¹¹ Compare SBC at 6 ("The public is better served by allowing the free communication of . . . competitive offers.").

II. A SIMILARLY STRONG CASE IS MADE FOR DEFERRAL OF THE COMMISSION'S CPNI RULES AS THEY PERTAIN TO CPE AND INFORMATION SERVICES *VIS-À-VIS* WIRELINE CARRIERS

As numerous commentators persuasively argue, the logic of the arguments made regarding allowing use of CPNI in communications about CPE and information services within the "total service relationship" are not confined to CMRS providers. While such providers clearly present a compelling case for the integrated nature of their CMRS service offerings with both CPE and information services, their situation is not "unique," as some of them claim.¹²

The "regulatory" classifications¹³ the Commission has used with respect to certain services (generally landline) are classifications that mean nothing in the vast telecommunications marketplace -- whether with respect to CMRS or landline services. Because the application of those regulatory classifications has generally not been visible to consumers, but has been accomplished through down-stream accounting methodologies, customers of all telecommunications carriers -- including independent LECs (including GTE) and Regional Bell Operating Companies ("RBOC") -- will be inconvenienced and confused by the Commission's newly-required practices and procedures regarding CPNI usage.¹⁴ And the past

¹² See Vanguard at 2, 4 (arguing that a "one-size-fits-all" approach can ignore "unique characteristics" associated with service offerings and providers); 360° at 4; PrimeCo at 5, 6.

¹³ See AirTouch at 5-6 (arguing that such classifications are "landline" in nature, but acknowledging that they are inherently "regulatory" classifications not understood by consumers). Accord Sprint Spectrum at 1 ("landline-related regulatory distinctions").

¹⁴ See USTA at 2 (noting that the "great preponderance of telecommunications carriers, both wireline and wireless, . . . have never operated with CPNI

Commission policy statements regarding the public interest benefits associated with the efficient offering of CPE and enhanced services in conjunction with telephony services are no less affirmative than with respect to CMRS providers.¹⁵

CPE and information services are as integrated in the minds of the consumer with respect to landline services as they are with respect to mobile services.¹⁶

Indeed, the arguments of those who support such relief in a CMRS context, can easily be extended to wireline carriers through the simple use of ellipses.¹⁷ The

restrictions”), 4-5 n.11 (noting that the USTA’s more than 1000 local exchange carrier (“LEC”) members have never been subject to CPNI rules and that even the Commission’s CPNI rules applicable to BOCs and GTE are “less restrictive than the Commission’s new CPNI rules in both substance and scope.”).

¹⁵ See Sprint Spectrum at 2 and nn. 2-3; USTA at 5. And see Bell Atlantic at 3 (noting that it will argue the “unbroken chain of public interest findings in earlier proceedings” regarding the public interest benefits associated with the use of CPNI in the sales of CPE and information services in a petition for reconsideration).

¹⁶ While it is correct that CMRS offerings require CPE to be “activated” with respect to a particular provider’s service offering, in a manner that is not true of wireline services, the customer expectation regarding the integrated nature of services and CPE is no less strong in a wireline environment, particularly with respect to certain types of CPE.

¹⁷ To take just a single example, AirTouch argues that it “has always had a strong commitment to ensure that a customer’s CPNI is not misused or otherwise disclosed improperly.” AirTouch at 2. Certainly, this is true of other carriers -- including landline carriers -- as well. Such was demonstrated both by U S WEST in its comments in the underlying proceeding, as well as by Dr. Westin’s survey. See Public Attitudes toward Local Telephone Company Use of CPNI, Report of a National Opinion Survey, by Opinion Research Corporation, Princeton, N.J. and Prof. Alan F. Westin, Columbia University, sponsored by Pacific Telesis Group. Similarly, AirTouch argues that “an . . . important component of superior customer service is a carrier’s responsibility to identify and respond to customer expectations.” Id. Again, such is no more true of CMRS providers than other carriers. And continuing, AirTouch argues that “it has been able to meet [its] customer[s] need[s] because it has been free to use their CPNI to make recommendations for their consideration.” Id. But, such has been true for all carriers, not just AirTouch. And, just as it is true for AirTouch that its use of CPNI

fundamental consumer welfare policies associated with the arguments are the same.

For example, as GTE points out, the sale of ADSL CPE -- not generally available in the market today -- presents a situation where, absent deferral or forbearance, the service offering and its efficient delivery to consumers will be stymied.¹⁸ Certainly, given the general goal of the Communications Act to allow for

has allowed it "to identify the customers that are most likely to be interested in a new feature or package and to forego contacting the customers who are least likely to be interested in the same feature or package" (*id.* at 2-3), such is true for other carriers as well with respect to their service offerings. Just as AirTouch develops all of its packages with "one goal in mind," so too do other carriers seek to "meet the . . . needs of consumers" (*id.* at 4) with the crafting of their service packages. Finally, the Commission's CPNI rules will "cripple" other carriers' "ability to continue to meet customer expectations and requirements" (*id.* at 5) just as much as they will cripple AirTouch's ability.

Almost every filing on behalf of a CMRS carrier can be parsed in such a manner that the statutory and policy arguments they promote can be equally advocated on behalf of wireline providers. Undoubtedly, it is for this reason that MCI Telecommunications Corporation ("MCI") argues that there is nothing particularly "unique" about the effect of the Commission's rules on CMRS providers -- as opposed to other carriers -- that warrants deferral and that any granted deferral should extend to all carriers. MCI at 2-3. While U S WEST does think that the Commission's rules effect CMRS carriers in a manner perhaps not clearly appreciated based on the existing record, we also agree with MCI that the negative impacts of the Commission's rules are not confined to such carriers and that a deferral (or forbearance) should extend to all carriers. See U S WEST Comments at 8-11.

¹⁸ MCI's argument that GTE (and other LECs) should be prohibited from discussing ADSL CPE in the same conversation as the service associated with the CPE, absent affirmative customer approval, on the grounds that such argument seeks to extend the "monopoly" of the LECs through extension of the "local bucket" (MCI at 7-9), could be easily remedied by associating ADSL CPE with whatever carrier provides the service offering -- *i.e.*, with either the local or interexchange bucket. Clearly, the answer is not to prohibit the conveyance of the information. If -- as a factual matter -- ADSL modem providers are not currently generally available, the MCI proposal would have GTE remain silent, barring the granting of affirmative approval, before they could discuss an integral part of the offering. Given customer

the delivery of quality communications services to all Americans, such a situation would not only be inconsistent with quality customer service but Congressional expectations, as well.

Similarly, SBC makes a compelling case that other types of specialized equipment -- such as Caller ID equipment -- is integrally combined in the minds of the consumer with the underlying service offering, as are certain types of information services which themselves are incorporated into the service offering-CPE product.¹⁹ Just as certain "adjunct to basic offerings" are integrated into the offering/CPE, information services that kick in in conjunction with those services are considered by the consumer to be "used in" (and sometimes quite "necessary to") the provision of the service.²⁰

The public interest will clearly be harmed by a May 26, 1998 effective date of the Commission's rules, to the extent such rules will require -- for the first time for the majority of the millions of telecommunications carrier customers across the nation -- affirmative customer approval before such bundled service offerings can be

expectations, this is a bizarre proposal which only harms the consumer and does not demonstrably promote competition.

¹⁹ SBC at 11-12, 14-19. And see Bell Atlantic at 2 and n.4; BellSouth at 7, 9.

²⁰ See SBC at 10-12 (noting that enhanced services capabilities can often impact decisions about the need for additional telecommunications services); BellSouth at 8. And see AirTouch at 5 (noting that voice mail might be as important to a consumer's telecommunications-management needs as call forwarding), 360° at 4 n.10 (voice mail is "an important tool in enabling a customer to better manage his or her . . . communications services.").

efficiently provided.²¹ Customers looking toward a quality service provisioning discussion and experience will not look favorably on awkward communications expressing statements of "rights" in a conversation where the customer is simply trying to secure service and its chosen carrier is trying to meet those needs in a quality environment. And, just as is true of CMRS providers, the Commission's new rules immediately impact planned marketing efforts of landline carriers as severely as those of wireless providers.

III. **EITHER A DEFINITIVE CLARIFICATION SHOULD BE COMMUNICATED REGARDING NAME AND ADDRESS INFORMATION, AS WELL AS WIN-BACK COMMUNICATIONS, OR THE RULES SHOULD BE DEFERRED OR FORBORNE PENDING RECONSIDERATION**

A. **Name And Address Information**

Almost universally, commentators that address CTIA's Request that the

²¹ 360° argues (at 3) that the Commission's rules will prevent CMRS providers "for the first time, from offering the kinds of integrated service bundles that have become a hallmark of the industry." 360° also argues that "obtaining customer authorization . . . could take months to complete and create unnecessary added costs for the carrier. Moreover, likely customer response to such efforts remains questionable at best." *Id.* at 6. Similarly, USCC argues that "the complex 'notice and approval' procedures for obtaining customer consent . . . will take many months and hundreds of thousands of dollars to put . . . in place." USCC at 4.

These observations are equally true for landline providers, both those encumbered by existing CPNI rules and those not. The Commission's affirmative approval requirement as it pertains to CPE and enhanced services affects these carriers no less severely than CMRS providers. For this reason, it would be entirely inappropriate for the Commission to defer or forbear only for those carriers not previously subject to CPNI rules, as suggested by ALLTEL at 4 n.8. *Compare* BellSouth at 2-3, 4 (noting the substantial challenge of training employees regarding the Commission's counterintuitive CPNI rules); MCI at 3 (interexchange carriers have traditionally not been subject to CPNI rules and compliance with the Commission's *Order* "will be burdensome and costly for all of MCI's operations, just as it is for CMRS providers."), 4 and n.8.

Commission clarify that name and address information is not CPNI support CTIA's position.²² U S WEST supports those comments. As stated by Ameritech and USCC, name and address information is not the kind of information imbued with a privacy interest.²³ Furthermore, serious constitutional issues would arise were the Commission to deprive a telecommunications carrier of access to its basic customer list.²⁴

²² See, e.g., ALLTEL at 2 n.4, GTE at 3-4, MCI at 5-6, USCC at 6 (all supporting the idea that CMRS customer name and address is not CPNI). While U S WEST supports the position that name and address information is not CPNI *vis-à-vis* CMRS providers, we all advocate that the Commission make clear that no name and address information in the hands of any carrier is CPNI. See Ameritech at 3, Bell Atlantic at 2 n.6; SBC at 26-27.

²³ Ameritech at 3 (such information "does not constitute the type of information about telecommunications services usage that is articulated in the statutory definition of CPNI"); USCC at 6 ("the 'expectation of privacy' issues which are at the heart of CPNI concerns simply do not arise with respect to customer names and addresses").

²⁴ Compare BellSouth at 11 (making the argument in the context of a win-back communication and referencing GTE's argument). By this, U S WEST does not mean to suggest that serious constitutional problems do not already exist with respect to the Commission's Second Report and Order and its treatment of carriers' information assets (in the form of commercial data). See, e.g., Cate, Fred. H., Privacy in the Information Age, (Brooks Institute Press, Washington, D.C. 1997) at pp. 72-76 ("Data protection regulation may legitimately prompt takings claims. If the government prohibits the processing of personal data, it could deny the owner all or most of the inside 'economically viable use' of that data . . . A legislative, regulatory, or even judicial determination that denies processors the right to use their data could very likely constitute a taking and require compensation (footnote omitted) . . . It is sufficient to note that the personal information held by others is probably the subject of property and related rights. Those rights are in almost every case possessed by the data processor, not the persons to whom the data pertain and because these data are accorded property-like protection, they are subject to being taken by government regulation, thereby triggering an obligation to compensate the data owner . . . In some situations, interference with [a data owner's] rights constitutes a taking and requires compensation. But even shy of a compensable taking, the constitutional centrality of property cautions against unduly interfering with those rights.").

We support those that suggest that this matter can be easily clarified.

However, to the extent the Commission does currently consider name and address information to be CPNI, it should defer its rules or forbear from their application or enforcement pending reconsideration, to allow for a full and fair presentation on this aspect of the CPNI issues.

B. Win-Back Communications

CTIA asked that the Commission "clarify" this aspect of its CPNI rules. As the filed comments demonstrate, it may not be possible to "clarify" this matter in as simple a manner as CTIA suggests. Some carriers want a clarification along the lines suggested by CTIA,²⁵ whereas others believe that there are certain nuances to the Commission's win-back rule that require attention.²⁶ It is probably the case that the resolution of the win-back matter is more fundamental than CTIA suggests -- specifically, an ultimate vacation of the Commission's rule in this area. For this reason, the matter of win-back communications is probably best left to the reconsideration process.

However, pending that process, the Commission should defer or forbear from applying or enforcing its existing rule. As numerous commentators argue -- in support of the CTIA position -- such a rule is fundamentally anti-consumer and

²⁵ See, e.g., USCC at 5-6; SBC at 24.

²⁶ For example, AT&T makes the differentiation between a "former" customer and a soon-to-be former customer. AT&T at 7 n.5. U S WEST also noted this nuance in our comments, suggesting that care needed to be taken in crafting any "clarification" issued regarding this matter. U S WEST at 14-15. And see BellSouth at 10-11 and n.16; MCI at 13-14 (arguing that a win-back communication prior to the customer actually leaving a LEC would be inappropriate).

anticompetitive. Furthermore, restricting such communications depresses the collateral aspect of win-back communications in the fight against slamming.²⁷ Regardless of how it is postured, prohibiting the use of CPNI in the context of win-back communications operates at odds with the public interest not in concert with it.²⁸ For these reasons, the effective date of the Commission's rule should be deferred or the Commission should forbear from applying the rule until after the reconsideration process.

IV. CPNI USE WITHIN A "PACKAGE" ENVIRONMENT

Along with Ameritech,²⁹ U S WEST supported GTE's request for forbearance regarding the use of CPNI for those customers who purchase packages, to allow for marketing of upgrades or changes to those packages, even if the "new" package might contain a service associated with a "separate" bucket.³⁰ As GTE persuasively argued, customers who buy packages most especially do not consider their service subscription to be "bucket-defined," and expect that different package

²⁷ See Bell Atlantic at 4; SBC at 23, 24-25. And see U S WEST Comments in CC Docket No. 94-129, filed Sep. 15, 1997 at 25 (referencing the BellSouth Florida survey demonstrating that more than 42 percent of the customers they contacted had no idea that their service had been switched).

²⁸ For example, in addition to the fact that a win-back communication often turns up cases of slamming, given the manner in which much slamming is done, customers often expect the carrier with whom they do (or did) business to have access to CPNI and actually inquire as to the specifics of the CPNI to ascertain that they are really talking to the carrier they expect to be talking with. Compare U S WEST's slamming comments, wherein we attached a transcript of a call to a customer where the caller claimed to be U S WEST. Comments of U S WEST to Notice of Proposed Rule Making and Petition for Reconsideration of Memorandum Opinion and Order on Reconsideration, CC Docket No. 94-129, filed Sep. 15, 1997 at Attachment.

²⁹ Ameritech at 2-3.

configurations will be offered to them over time.

MCI takes issue with this argument. It claims that GTE's proposal essentially seeks "a major rewriting of the Order."³¹ MCI argues that "[a]s a practical matter, there is little difference between a total offering that includes two service categories and an integrated service package that includes the same services."³² MCI is not correct.

As a general matter, carriers (at least RBOCs, we believe) can determine if a customer subscribes to two services through discrete purchases or subscribes to a "package" of services. Often the differences lie in the pricing associated with the different services, or the inclusion of enhanced services or CPE at reduced rates. And, usually, the "package" will be associated with a Universal Service Order Code ("USOC") different from the underlying separate services.

GTE is correct that the Commission's construction of Section 222(c)(1) did not really address this particular aspect of a customer's service subscription or a customer's expectations in this context. Here the "total service relationship" is defined not by service subscription but by package subscription, with a clear expectation that other package information and opportunities will be forthcoming. MCI's "competitive" arguments simply pale with respect to addressing the

³⁰ GTE Petition at 26-27.

³¹ MCI at 10.

³² Id.

expectations and service needs of customers purchasing such packages.³³ For this reason, the Commission should forbear from requiring that its rules be applied to package subscriptions prior to a reconsideration of the matter.

V. CONCLUSION

As requested by CTIA, the Commission should defer for at least 180 days the effective date of its Second Report and Order rules. Alternatively, the Commission should announce a decision to forbear from enforcement of its rules until the reconsideration process is concluded.

The public interest certainly will not be harmed by such deferral. Section 222 was self-effectuating in 1996. To the extent that carriers deem their existing relationship with customers to form the foundation for an implied approval to use CPNI, or if they have engaged in some type of affirmative approval consent process, the consumers in the carrier-consumer relationship are suffering no statutory violation.

Against that backdrop of lack of public harm is the harm to the public that will undoubtedly occur if the Commission stands firm on its May 26, 1998 effective date of its CPNI rules. Given that carriers cannot by that time have secured the one-to-one type of affirmative consent the Commission mandates, the *status quo* customer expectations that the Commission itself has fostered around one-stop

³³ MCI at 11-12. While MCI might be correct that a "package" approach to subscription analysis might well look very similar to "the single category approach" (*id.* at 10), it might well be that the Commission can be convinced, at least with respect to customers that actually subscribe to packages, that this is the customer expectation and the "single category approach" is permissible in such context.

shopping and joint marketing, and which the Telecommunications Act endorses,
should not come to an abrupt halt or be compromised by either statutory
interpretations or policy decisions that are clear to be the subject of reconsideration.

Respectfully submitted,

U S WEST COMMUNICATIONS, INC.

By:

Kathryn Marie Krause

Kathryn Marie Krause (RW)

Suite 700

1020 19th Street, N.W.

Washington, DC 20036

(303) 672-2859

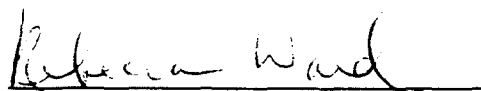
Its Attorney

Of Counsel,
Dan L. Poole

May 13, 1998

CERTIFICATE OF SERVICE

I, Rebecca Ward, do hereby certify that on this 13th day of May, 1998, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST COMMUNICATIONS, INC.** to be served, via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.


Rebecca Ward

* Served via hand delivery

***William E. Kennard**
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

***Gloria Tristani**
Federal Communications Commission
Room 826
1919 M Street, N.W.
Washington, DC 20554

***Michael K. Powell**
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, DC 20554

***Harold Furchtgott-Roth**
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

***Susan P. Ness**
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

***A. Richard Metzger, Jr.**
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, DC 20554

***Carol Matthey**
Federal Communications Commission
Room 544
1919 M Street, N.W.
Washington, DC 20554

***Janice M. Myles**
Federal Communications Commission
Room 544
1919 M Street, N.W.
Washington, DC 20554

***Dorothy Attwood**
Federal Communications Commission
Room 533-C
1919 M Street, N.W.
Washington, DC 20554

***Tonya Rutherford**
Federal Communications Commission
Room 533-A
1919 M Street, N.W.
Washington, DC 20554

***International Transcription
Services, Inc.**
1231 20th Street, N.W.
Washington, DC 20036

**Michael F. Altschul
Randall S. Coleman**
Cellular Telecommunications
Industry Association
Suite 200
1250 Connecticut Avenue, N.W.
Washington, DC 20036

John F. Raposa
GTE Service Corporation
HQE03J27
600 Hidden Ridge
Irving, TX 75038

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.
Washington, DC 20036

R. Michael Senkowski
Michael Yourshaw
Gregory J. Vogt
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006-2304

GTE

Pamela J. Riley
David A. Gross
AirTouch Communications, Inc.
Suite 800
1818 N Street, N.W.
Washington, DC 20036

Glenn S. Rabin
ALLTEL Communications, Inc.
Suite 220
655 15th Street, N.W.
Washington, DC 20005

Mark C. Rosenblum
Judy Sello
AT&T Corp.
Room 3245I1
295 North Maple Avenue
Basking Ridge, NJ 07920

Michael S. Pabian
Ameritech Operating Companies
Room 4H82
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

Lawrence W. Katz
Bell Atlantic Telephone Companies
8th Floor
1320 North Court House Road
Arlington, VA 22201

S. Mark Tuller
Bell Atlantic Mobile, Inc.
180 Washington Valley Road
Bedminster, NJ 07921

M. Robert Sutherland
A. Kirven Gilbert III
BellSouth Corporation
Suite 1700
1155 West Peachtree Street, N.E.
Atlanta, GA 30309-3610

Frank W. Krogh
Mary L. Brown
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006

Cheryl A. Tritt
James A. Casey
Morrison & Foerster, LLP
Suite 5500
2000 Pennsylvania Avenue, N.W.
Washington, DC 20006-1888

360°

James J. Halpert
Mark J. O'Connor
Piper & Marbury, LLP
7th Floor
1200 19th Street, N.W.
Washington, DC 20036

OMNIPOINT

William L. Roughton, Jr.
PrimeCo Personal Communications, LP
Suite 320 South
601 13th Street, N.W.
Washington, DC 20005

Stephen G. Kraskin
Sylvia Lesse
Marci E. Greenstein
Kraskin, Lesse & Cosson, LLP
Suite 520
2120 L Street, N.W.
Washington, DC 20037

RURALCELL

Robert M. Lynch
Durward D. Dupre
Michael J. Zpevak
Robert J. Gryzmala
SBC Communications Inc.
Room 3532
One Bell Center
St. Louis, MO 63101

Joseph R. Assenzo
Sprint Corporation
12th Floor
4900 Main Street
Kansas City, MO 64112

Peter M. Connolly
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Washington, DC 20036

USCC

Linda Kent
Keith Townsend
Lawrence E. Sarjeant
United States Telephone Association
Suite 600
1401 H Street, N.W.
Washington, DC 20005

Raymond G. Bender, Jr. VANGUARD
J.G. Harrington
Kelli Jareaux
Dow, Lohnes & Albertson, PLLC
Suite 800
1200 New Hampshire Avenue, N.W.
Washington, DC 20036

CC96115K.doc
Last Update: 5/12/98